

**BEFORE THE  
FEDERAL MARITIME COMMISSION**

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OFFICE OF THE SECRETARY  
FEDERAL MARITIME COMM

Docket No. 11-15

**CITGO REFINING AND CHEMICALS COMPANY L.P.**

**COMPLAINANT**

**v.**

**PORT OF CORPUS CHRISTI AUTHORITY OF NUECES COUNTY, TEXAS**

**RESPONDENTS**



**COMPLAINT**

Complainant, CITGO Refining and Chemicals Company L.P. ("CITGO" or "Complainant"), by and through the undersigned hereby files this Complaint against Port of Corpus Christi Authority of Nueces County, Texas ("PCCA" or "the Port"), pursuant to 46 U.S.C. § 41301(a), alleging violations of the Shipping Act of 1984, as amended (46 U.S.C. § 40101 *et seq.*)(the "Shipping Act").

Complainant has been charged wharfage and other charges that are excessive and not reasonably related to the value of services rendered to Complainant. Through application of such charges, Complainant has been forced to subsidize costs associated with services provided to other users of port facilities. Such other users therefore receive greater levels of service and

benefit from the PCCA at lower cost. The PCCA has refused to negotiate any modification of its wharfage and other fees and charges.

Complainant therefore seeks a cease and desist order and reparations for injuries caused to them by the PCCA's violations of the Shipping Act, 46 U.S.C. §§ 41102(c), 41106(2) and (3), including (a) subjecting Complainant to an undue or unreasonable prejudice or disadvantage; (b) granting an undue preference or advantage with respect to other users of its facilities; (c) failing to establish, observe, and enforce just and reasonable regulations and practices relating to or connected with the receiving, handling, storing or delivering of property; and (d) unreasonably refusing to deal or negotiate with Complainant regarding a modification of the unreasonable rates and charges.

#### **I. Complainant**

A. Complainant CITGO Refining and Chemicals Company L.P. is a limited partnership duly organized and existing under the laws of the State of Delaware.

B. CITGO's principal place of business is 1293 Eldridge Parkway, Houston, Texas 77077-1670.

C. CITGO operates a petroleum refinery at two locations (the East and West Plants) along the Corpus Christi Ship Channel (the "Channel"). Vessels carrying crude oil call at both plants of CITGO's refinery for the purpose of discharging their cargoes. The refineries and all associated facilities are owned, operated, and maintained by CITGO. Costs associated with the

operation of the refineries are paid by CITGO. The crude oil is refined into various petroleum products, and from there sold and distributed via pipeline and vessels to various buyers.

## **II. Respondent**

A. PCCA is a navigation district and political sub-division of the State of Texas under Article XVI, Section 59 of the Texas Constitution, with its principal place of business in Corpus Christi, Texas.

B. PCCA owns, operates and/or leases wharves, docks, warehouses, and other terminal facilities at the Port of Corpus Christi (including transit sheds, open storage facilities, freight handling facilities and equipment, a bulk handling terminal, warehouse facilities, a grain elevator, and a multi-purpose cruise terminal/conference center).

C. PCCA serves several common carriers registered with the Commission as vessel operating common carriers that regularly call at the Port of Corpus Christi, including but not limited to Green Chartering AS, SCM Lines – Transportes Maritimos LDA, Grieg Star Shipping, Westfal-Larsen Shipping, Chinese-Polish Joint Stock Shipping Co., BBC Chartering & Logistics GmbH & Co. KG, and Industrial Maritime Carriers, LLC.

## **III. Jurisdiction**

A. The PCCA is, and holds itself out to be, a marine terminal operator within the meaning of the Shipping Act, 26 U.S.C. § 40102(14) because it is



engaged in the business of providing wharfage, dock, warehouse and other terminal facilities in connection with common carriers, and in connection with common carriers and water carriers subject to Subchapter II of the Chapter 135 of Title 49.

B. The Commission has jurisdiction over this Complaint pursuant to 46 U.S.C. § 41301 because the Port is a marine terminal operator subject to the Shipping Act and the actions of the Port which are the subject of this Complaint constitute violations of the Shipping Act.

#### **IV. Statement of Facts**

A. CITGO operates a petroleum refinery at two locations (the East and West Plants) along the Corpus Christi Ship Channel. The refineries and all their attendant facilities, including CITGO's private docks and wharves (the "private docks"), are owned, operated, and maintained by CITGO. CITGO assumes the expense of maintaining its private docks and the Port provides virtually no services or improvements with respect to those private docks.

B. Vessels carrying crude oil for CITGO call at CITGO's refinery for the purpose of discharging their cargoes there and/or at the PCCA's public oil docks.

C. CITGO is charged wharfage and dockage fees by PCCA with respect to vessels serving CITGO at the PCCA's public docks.

D. Pursuant to restrictions included in the original mutual conveyances between the Nueces Navigation District (the predecessor to the

PCCA) and the predecessor in interest to CITGO, CITGO is required to negotiate and enter into franchise agreements with the PCCA to allow vessels serving CITGO at its refinery the right to access the Channel.

E. The PCCA also charges CITGO a franchise fee of 50% (fifty percent) of the wharfage tariff rate for the applicable commodity for access to the Channel for vessels serving CITGO at the private docks.

F. PCCA assesses wharfage against CITGO for use of wharves at the PCCA's public docks pursuant to Port Tariff 100-A, Section Five, Loading, Unloading and Wharfage Rates Item 501 B. This provision pertains to all liquid bulk cargo including but not limited to crude and refined petroleum, petroleum products, petrochemicals, chemicals and other bulk liquids except liquefied natural gas (LNG). In just over 10 years, the PCCA has increased wharfage rates for liquid bulk cargo by approximately 110%. Specifically, in 2000, the wharfage rate for liquid bulk cargo was \$.04 per 42 gallon barrel, in 2005 the rate increased to \$0.06 per barrel, in 2007 the rate increased to \$0.08 per barrel, in 2010 the rate increased to \$0.0828 per barrel, and effective January 1, 2011, the rate was again increased to \$0.0839 per barrel.

G. As defined in the PCCA's tariff, "wharfage is solely the charge for use of a wharf and does not include charges for any other service."

H. CITGO is also assessed a Security Surcharge as a percentage of all wharfage and dockage. The Security Surcharge is currently 7.5% (as of April 1, 2011.) It was previously assessed in the amount of 11.0% (2006), 11.5% (2007), 12.0% (2008), and 10% (2009-2010).

I. The PCCA has applied the Security Surcharge to all wharfage fees collected, including those collected for CITGO's private facilities pursuant to CITGO's franchise agreements with the PCCA.

J. In 2010, the Port reported that CITGO paid \$6,584,832 in wharfage fees, which accounted for 17.85% of total revenues collected by the Port from all port tenants in the year 2009.

K. Despite the significant wharfage fees assessed against CITGO since 2006, PCCA has not provided nearly commensurate services to CITGO. Further, to the extent the Port provides maintenance or security services to CITGO, such services are covered by separate fees.

L. In 2009, the most recent year for which the PCCA has reported such figures, the PCCA reported that it raised \$16,624,977 in operating revenue at its public oil docks, in comparison to \$1,761,772 in operating expenses and \$1,782,106 in non-operating expenses allocated to such facilities. This resulted in net income of approximately \$13 million for the PCCA at these facilities. The PCCA also reported that it generated operating revenue of \$10,988,948 from the private oil docks as compared to expenses allocated to such facilities of \$90,994 resulting in net income of approximately \$10,897,954. In total, the PCCA raised over \$23 million in net income from oil dock users in 2009, while expending less than \$2 million.

M. The net income generated from the oil docks is significantly higher than that generated at other facilities. For example, in 2009, besides the oil docks, the next highest income generating facility for the Port was the Bulk



Terminal. The Port reported that the Bulk Terminal generated operating revenue of \$5,457,384 and expenses of \$4,063,423 resulting in net income of \$1,393,961 for the Port. All other port facilities generated even lower net income for the Port than the Bulk Terminal including net losses at the Port's refrigerated warehouse facilities, conference center, and Naval Station Ingleside.

N. In 2009, the Port reported that operating expenses attributed to the public oil facilities by the Port constituted just 3.7% of the Port's total operating expenses. The operating expenses associated with the private oil facilities, where all costs for maintenance and upkeep of the facilities are paid by the owner of the facility, constituted less than 1% of the Port's total operating expenses.

O. Other users of the port pay significantly less in fees than the oil users (including CITGO), but receive greater benefits. In 2009, operating expenses at the PCCA's dry cargo facilities, refrigerated warehouse facilities, and bulk terminal were each higher than those at the oil facilities, but the non-oil facilities generated significantly less operating revenue and net income. In effect, the fees paid to the PCCA by CITGO subsidize the services provided by PCCA to other port users. As such, similarly situated users of these other Port facilities receive the benefit of comparable or greater service without the attendant cost of the significantly higher wharfage fees assessed to CITGO.

P. Further, upon information and belief, wharfage revenues collected by the PCCA are not segregated or placed into restricted accounts. Rather,

wharfage revenues are treated as fungible monies and placed in the PCCA's general revenue fund to not only pay wharfage related expenses but are also used to: 1) increase the PCCA's capital reserves, 2) support various capital improvement projects that will not benefit CITGO, and 3) pay operating expenses for unrelated facilities at the Port which also do not benefit CITGO.

Q. CITGO has attempted to negotiate with the PCCA a modification of the wharfage rate for liquid bulk cargo based on the attendant costs to the PCCA and benefits received by CITGO.

R. In addition to all the foregoing fees and charges, pursuant to a Frequent User Agreement with the Port, CITGO pays maintenance fees at the same public docks for which it is already assessed wharfage and dockage charges. Under this agreement, for example, CITGO paid \$79,101.18 and \$117,242.55 for maintenance at the public docks in 2009 and 2010 respectively.

S. On June 14, 2011, the Port Commissioners voted to approve a \$15.5 million expenditure for its share of the expenses for the extension of the La Quinta Ship Channel and ecosystem restoration. This project is the first of several associated with the Port's Channel Improvement Project.

T. The Port reported that the Channel Improvement Project includes widening and deepening the ship La Quinta Ship Channel to handle larger vessels; constructing barge lanes to separate ship traffic, and extending the channel to provide access for a proposed multi-purpose dock and container handling facility.



U. CITGO does not anticipate that it will benefit or use the La Quinta Channel or the proposed dock or container facility.

V. The Port has not reported the source of the funds for the recently approved \$15.5 million La Quinta expenditure.

W. On December 8, 2009, the PCCA approved an increase in the wharfage rate for liquid bulk cargo in the amount of 2.1 cents per barrel for a five-year period beginning January 1, 2011, and ending on December 31, 2015 (the "Cash Reserve Fee"). The revenue from the Cash Reserve Fee was purportedly to be used to meet unexpected expenses and to deal with potential catastrophic events. In particular, the PCCA deemed it necessary to have a minimum of \$40,000,000 in cash reserves to cover an estimated 12 months of operating expenses. On December 14, 2010, the PCCA delayed implementation of the Cash Reserve Fee for one year and indicated that the fee may be assessed against all users of the port.

X. The PCCA has refused to deal or negotiate with CITGO on any modification of the fees and charges applicable to it.

**V. Violations of the Shipping Act**

A. As a result of the foregoing facts and allegations, which are incorporated by reference in this section of the Complaint, the Port has violated and continues to violate the Shipping Act, 46 U.S.C. §§ 41106(2) and (3) and 41102(c).

B. As set forth in those factual allegations, CITGO seeks a cease and desist order and reparations for injuries caused to it by the PCCA's violations of the Shipping Act, 46 U.S.C. §§ 41102(c) and 41106(2), including on a continuing basis (a) subjecting CITGO to an undue or unreasonable prejudice or disadvantage; (b) granting an undue preference or advantage with respect to certain users of its facilities; and (c) failing to establish, observe, and enforce just and reasonable regulations and practices relating to or connected with the receiving, handling, storing or delivering of property.

C. Specifically, the Port has violated the above provisions because CITGO has been charged wharfage and other charges calculated as a percentage thereof that are excessive and not reasonably related to the value of services rendered to CITGO. Through application of such charges, CITGO has been forced to subsidize costs associated with services provided to other users of port facilities.

D. Further, any imposition of the Cash Reserve Fee, as scheduled to take effect on December 14, 2011, would be unjust and unreasonable because it would force CITGO to pay for undefined services from which it may not receive any benefit and would be excessive in relation to its purported goals.

E. To the extent that the PCCA's cash reserves are to be used to approximate the PCCA's total operating expenses, the charges levied against CITGO to build such reserves are not reasonably related to the operating expense associated with CITGO's operations at the port.

F. To the extent that the PCCA's cash reserves or the proceeds of a cash reserve fee will fund the La Quinta Channel extension or Channel Improvement Project, neither of which will be used by or benefit CITGO, the charges levied against CITGO are not reasonably related to the operating expense associated with CITGO's operations at the port.

G. Despite CITGO's requests that the PCCA take action to remedy the unfair and prejudicial treatment of CITGO such that the fees and charges assessed to CITGO represent a reasonable approximation of the services actually received, the PCCA has continued the foregoing undue and unreasonable preferences in favor of the non-liquid bulk users of the port, to the prejudice and disadvantage of CITGO.

H. PCCA has violated the Shipping Act, 46 U.S.C. § 41106(3), by unreasonably refusing to deal or negotiate with CITGO regarding a modification of the wharfage rate for liquid bulk cargo. The PCCA's refusal to negotiate is not based on any legitimate business rationale and therefore is unreasonable.

I. There is no transportation factor justifying the foregoing unjust and unreasonable practices, undue or unreasonable prejudices against CITGO, or the undue or unreasonable preferences advantaging other users of the port.

J. The PCCA's actions are the proximate cause of damage to CITGO.

## **VI. Injury to Complainant**

A. As a result of the Port's aforementioned violations of the Shipping Act, CITGO has sustained and continues to sustain injuries and damages,



including but not limited to higher costs, unreasonable franchise fees, and other undue and unreasonable payments and obligations to the PCCA. CITGO estimates that damages to it are in the millions of dollars. A more precise amount will be determined at hearing.

## **VII. Prayer for Relief**

A. **WHEREFORE**, Complainant prays that the Respondent PCCA be required to answer the charges herein; that after due hearing in Washington, D.C., an order be made:

1. Commanding the PCCA to cease and desist from engaging in the aforesaid violations of Shipping Act; putting in force such practices as the Commission determines to be lawful and reasonable; and

2. Commanding the PCCA to pay to CITGO reparations for violations of the Shipping Act, including the amount of the actual injury, plus interest, costs and attorneys fees; and

3. Commanding any such other relief as the Commission determines appropriate.

B. Statement regarding alternative dispute resolution procedures: CITGO has met with the PCCA in an attempt to resolve this dispute, but the PCCA has rebuffed CITGO's efforts. Therefore, CITGO does not believe that alternative dispute resolution procedures would be productive and CITGO has not consulted with the Commission's dispute resolution specialist.

Respectfully submitted,

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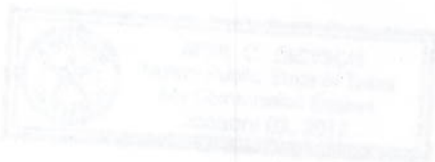
*Attorneys for CITGO Refining and  
Chemicals Company L.P.*

Dated: August \_\_, 2011

Robert E. Kent  
Robert E. Kent  
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Houston, TX 77077  
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*John A. C. N.H.*

Subscribed and sworn to before me by Robert E. Kent proved to me on  
the basis of satisfactory evidence to be the person who appeared before me, in  
Harris County, Texas, this 24th day of August, 2011.



John A. C. N.H.  
NOTARY PUBLIC  
For the State of Texas  
County of Harris

My Commission expires 8/20/2012

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**CITGO REFINING & CHEMICALS COMPANY L.P.**

**COMPLAINANT**

**v.**

**PORT OF CORPUS CHRISTI AUTHORITY OF NUECES COUNTY, TEXAS**

**RESPONDENT**



**COMPLAINANT'S FIRST REQUEST FOR ADMISSIONS, FIRST SET OF  
INTERROGATORIES AND FIRST REQUEST FOR PRODUCTION OF  
DOCUMENTS TO RESPONDENT**

Complainant CITGO Refining & Chemicals Company L.P. hereby serves their First Request for Admissions, First Set of Interrogatories, and First Request for Production of Documents to Respondent Port of Corpus Christi Authority of Nueces County, Texas.

**DEFINITIONS**

- A. The terms "Port of Corpus Christi Authority of Nueces County, Texas", "PCCA", and "the Port" refer to the Port of Corpus Christi Authority of Nueces County, Texas and all current and former employees and agents thereof.
- B. The terms "Respondent," "you," and "your" mean the PCCA and all current and former employees and agents thereof.
- C. The term "Complaint" means the Complaint filed by CITGO in this Docket.



D. The term "Complainant" refers to CITGO Refining & Chemicals Company L.P. ("CITGO").

E. The words "document" and "documents" shall be defined in the customary and broad sense to include all written, electronic, digital, or photographic materials that are now or were formerly in your possession, custody or control, whether stored in paper files or electronically, including without limitation: reports, memoranda, correspondence, electronic mail, excel charts, records, written policies, notes, summaries or records of conversations or meetings, telephone messages, drafts of any documents, copies of any document with added notations or comments, photographs, and sound or video recordings.

F. "Describe" means provide a detailed statement of all things relating to or affecting the particular subject to be described including, but not limited to, dates and places and the names and addresses of any persons involved. With respect to documents, reports, or other written matter, the term "describe" also includes a detailed statement of the substance of the facts and opinions made with reference to or stated in each document, report, or written matter.

G. "Identify" or to give the "identity of," shall mean:

- (1) In the case of a natural person, to state:
  - (a) Full name;
  - (b) Last known address;
  - (c) Employer or business affiliate; and
  - (d) Occupation and business position (including title) held.
- (2) In the case of a company or other business entity, to state:
  - (a) Name;
  - (b) Nature of the business entity;

- (c) Business address; and
  - (d) Partners and affiliates, if any.
- (3) In the case of a document, to state:
- (a) Identity of the person(s) preparing it and of the sender(s);
  - (b) Its title or, if it has no title, a description of the general nature of its subject matter;
  - (c) The identity of the addressee(s), if any;
  - (d) Its date of preparation;
  - (e) Location of the original, or, if there is no original, the location of all copies, and identity of present custodian;
  - (f) Whether or not the document is claimed to be privileged; and
  - (g) The identity of the person(s) who can identify it.
- (4) In the case of an oral statement or communication, to state:
- (a) The maker and recipients of the oral statement or communication;
  - (b) Where and when the oral statement or communication was made;
  - (c) The identity of all persons present when the oral statement or communication was made;
  - (d) The mode of communication;
  - (e) The subject matter of the oral statement or communication;

(f) The complete contents of the statement or communication.

H. The term "FMC Rules of Practice and Procedure" means the rules of practice and procedure set forth in 46 C.F.R. Part 502.

I. The term "person" means and includes natural persons, governmental entities and agencies, proprietorships, partnerships, corporations, and all other forms of organization or association.

J. The term "restricted account" means a financial account from which expenditures are earmarked only for certain uses or expenses and are not available to cover general expenses.

K. The term "wharfage" or "wharfage fee" means, as defined in the Port's tariff, the charge for use of a wharf.

L. The term "dockage" or "dockage fee" means, as defined in the Port's tariff, the charge assessed against a vessel for berthing at a wharf, pier, bulkhead, or bank, or for mooring to a vessel so berthed.

#### **GENERAL INSTRUCTIONS**

A. Each interrogatory and request for admission must be answered separately and specifically.

B. Words used herein in the singular number shall include the plural number and words used in the plural number shall refer to the singular number as well. Gender is to be wholly disregarded, the neuter referring as well to the male and female and the male referring to the female and neuter.

C. The conjunction "and" is defined to include the disjunctive "or," and vice versa.



D. If, in answering these interrogatories and responding to these requests for admissions and requests for production of documents, or any part of them, the party responding encounters any ambiguity in construing either the discovery request or a definition or instruction relevant to the inquiry contained within the discovery request, the party shall set forth the matter deemed "ambiguous" and set forth the construction chosen or used in answering the discovery request.

E. Unless otherwise specified, these discovery requests shall be deemed continuing so as to require additional responses if new or further information is obtained subsequent to the time any answers or documents are served, as though expressly requested by separate discovery requests.

F. Wherever a discovery request calls for the identification or production of a document or non-written communication claimed by an answering party to be privileged, separately identify each such document or non-written communication by author, date, the person or persons to whom it was addressed, the person or persons to whom it was sent, the length of the document, and a description of the type of subject matter included in the document. State the type of privilege claimed and the complete factual basis for the assertion of such claim.

G. In each instance where you deny knowledge or information sufficient to answer an interrogatory or any part thereof, describe the effort made to locate information to answer such interrogatory or part thereof, and identify each person, if any, known or believed to have such knowledge.

H. If you produce documents for inspection you shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the request. In the event that you produce

documents that are identified in connection with one or more interrogatories or requests for production of documents, you shall label them to reflect each interrogatory and request for production of documents to which they respond.

I. If any document that you would have produced was, but no longer is, in your present possession or subject to your control or is no longer in existence, state whether such document is: (1) missing or lost; (2) destroyed; (3) transferred to others; or (4) otherwise disposed of. In any such instance, set forth the surrounding circumstances and any authorization for such disposition and state the approximate date of any such disposition, and, if known, the present location and custodian of such document.

J. Answers to these interrogatories and requests for admissions are to be based upon all knowledge or information available to you, including, but not limited to, all knowledge or information derivable from business or other records, all knowledge or information possessed by any employee, agent, attorney, expert witness, consultant, or other advisor or other persons subject to your instruction, direction, or control.

K. If you cannot answer any of the following discovery requests in full after exercising due diligence to secure the information to do so, answer to the extent possible and explain your inability to provide a complete answer. State whatever information or knowledge you have about the unanswered portion of any request.

L. Where an objection is made to any discovery request or sub-part thereof, pursuant to FMC Rules of Practice and Procedure, the objection shall state with reasonable specificity all grounds for the objection.

M. Where information otherwise discoverable is withheld due to a claim that the information is privileged or subject to protection as trial-preparation material, you must expressly state such claim and provide a log for such material that describes the nature of the documents, communications, or tangible things not produced or disclosed — and does so in a manner that, without revealing information itself privileged or protected, allows for assessment of the claim(s).

N. Each request for production of documents contained herein extends to all documents in your possession, custody or control, or the possession, custody or control of anyone acting on your behalf, including counsel, representatives, agents, servants, employees, investigators or consultants.

O. These requests cover the period beginning January 1, 2005 until the present, and shall be deemed to be continuing in nature so as to require updated responses as appropriate up to the trial of this matter.

P. Electronic documents shall be produced in the form of a TIF with metadata attached. In addition, all electronic data shall be preserved in native format without alteration or deletion of data, including metadata.

### **ADMISSIONS**

Pursuant to FMC Rules of Practice and Procedure Rule 207, Complainant requests Respondent, within thirty (30) days after service of these requests, to make the following admissions for the purpose of this action only:

1. Admit that PCCA is a marine terminal operator as that term is defined in the Shipping Act of 1984, as amended.



## **INTERROGATORIES**

Pursuant to FMC Rules of Practice and Procedure Rule 205, Complainant by and through its undersigned counsel, hereby requires Respondent to answer fully and separately in writing, under oath, the following interrogatories within thirty (30) days after the date of service:

1. Identify each person who assisted in or provided responses or information used in response to these Interrogatories.

2. For each request in Complainant's First Requests for Admissions which is denied, denied in part, or qualified:

(a) set forth in detail all of the reasons why you deny the request, deny the request in part, or have qualified your answer; and

(b) identify all documents that support your denial of the request, denial of the request in part, or qualification of your answer.

3. Identify all persons whom you know, or have any reason to believe, have knowledge of any facts relevant to the issues in this proceeding, and provide each person's name, address, telephone number, their association with PCCA, their job title and a general description of the facts known by each such person.

4. For each witness you expect to call to testify on your behalf in the hearing of this case, state:

(a) the witness's name;

(b) the witness's address and telephone number;

(c) the subject matter on which the witness is expected to testify;

(d) the substance of the facts and opinions regarding which the witness is expected to testify and the grounds for each such opinion; and

5. For each expert witness you expect to call to testify on your behalf in the trial of this case, state:

- (a) the expert's name;
- (b) the expert's address and telephone number;
- (c) the subject matter on which the expert is expected to testify;
- (d) the substance of the facts and opinions regarding which the expert is expected to testify and the grounds for each such opinion; and
- (e) the identity of all consulting experts whose opinions, beliefs, or theories form the basis, in whole or in part, for the testifying expert's opinion or will otherwise be relied upon by the testifying expert.

6. Identify all ocean common carriers and water carriers subject to Subchapter II of Chapter 135 of Title 49, United States Code that have called at the Port of Corpus Christi since 2005 and for each one indicate (a) the type of vessels it operates, (b) the facilities within the port at which it called, and (c) the date(s) of such calls.

7. Identify the total number of annual vessel calls at each individual terminal facility at the Port for the years 2005-2011.

8. Identify with particularity all facilities and services that you provide to vessels serving CITGO that call at your public facilities.

9. Identify with particularity all facilities and services that you provide to vessels calling at your public facilities other than vessels serving CITGO.

10. Identify with particularity all facilities and services that you provide to vessels calling at CITGO's private facilities.

11. Identify with particularity all facilities and services that you provide to vessels calling at private facilities at the Port of Corpus Christi other than CITGO's facilities.

12. Identify the total fees PCCA charged vessels calling at the Port's public facilities, broken down by fee type, customer, and facility, annually for the years 2005 through 2011.

13. Identify the total fees PCCA charged vessels calling at the private facilities within Port of Corpus Christi, broken down by fee type and facility, annually for the years 2005 through 2011.

14. Identify PCCA's total expenditures for each facility, public and private, broken down by category annually for the years 2005 through 2011. If there are general expenditures incurred by the PCCA that are allocated to a facility, identify those expenditures and describe the methodology or basis for allocation.

15. Describe any methodology and/or procedures that PCCA employs to establish or determine whether an expenditure relates to:

- a. The use of wharves within the Port of Corpus Christi at both public and private facilities.
- b. Vessels berthing at a wharf, pier, bulkhead, or bank, or for mooring to a vessel so berthed within the Port of Corpus Christi at both public and private facilities.
- c. The use of wharves at CITGO's private facilities.
- d. Vessels berthing at a wharf, pier, bulkhead, or bank, or for mooring to a vessel so berthed at CITGO's private facilities.



16. Describe any methodology and/or procedures that PCCA employs to establish or determine whether an expenditure otherwise relates to CITGO's private facilities.

17. For each of the years 2005 through 2011, identify with particularity all costs incurred by PCCA annually with respect to:

- a. Use of the wharves at the PCCA's public and CITGO's private facilities by vessels serving CITGO.
- b. Berthing at a wharf, pier, bulkhead, or bank, or for mooring to a vessel so berthed by Vessels serving CITGO at the PCCA's public and CITGO's private facilities.

18. Identify all PCCA accounts at financial institutions, and the sources of all funds deposited therein for the years 2005 through 2011.

19. Identify by fee type the account or accounts where fees collected from CITGO are deposited to.

20. Identify each of PCCA's restricted accounts and the purpose or designated use of each.

21. Identify any and all audits of PCCA's financial accounting records during the years 2005 through 2011.

22. Describe in detail any efforts by the Port to compare or align wharfage fee revenue to the costs associated with the use of wharves:

- a. Within the Port of Corpus Christi during the years 2005 through 2011.
- b. At the PCCA's public facilities, by individual facility, commodity, or collectively.
- c. At CITGO's private facilities either individually or collectively.

- d. At any private facilities within the Port of Corpus Christi either individually or collectively.

23. Describe in detail any efforts by the Port to compare or align dockage fee revenue to the costs associated with vessels berthing at a wharf, pier, bulkhead, or bank, or for mooring to a vessel so berthed:

- a. Within the Port of Corpus Christi during the years 2005 through 2011.
- b. At the PCCA's public facilities, by individual facility, commodity, or collectively.
- c. At CITGO's private facilities either individually or collectively.
- d. At any private facilities within the Port of Corpus Christi either individually or collectively.

24. Identify any PCCA facilities at which expense incurred exceeded revenue collected during any of the years 2005 through 2011.

25. Identify the amount of money collected from CITGO used to offset any losses identified in response to the preceding question.

26. What methodology is used to determine what percentage of the PCCA's wharfage fees will be charged to CITGO pursuant to its franchise agreements?

27. Identify all charges imposed by PCCA on owners, operators, or lessees of private facilities other than CITGO's for access to the Corpus Christi Ship Channel and the respective rates for such charges.

28. Identify the methodology used to establish the rates charged to other facility owners or operators for access to the Corpus Christi Ship Channel.

29. Identify all expected PCCA expenses associated with the extension of the La Quinta Ship Channel and ecosystem restoration and the Channel Improvement Project. Identify the source of funds that will be or have been used to pay such expenses.

30. Identify all benefits or services users of the Port will receive from the La Quinta Ship Channel and ecosystem restoration and the Channel Improvement Project.

31. Identify all benefits or services CITGO will receive from the La Quinta Ship Channel and ecosystem restoration and the Channel Improvement Project.

#### **Requests for Production of Documents**

Pursuant to FMC Rules of Practice and Procedure Rule 206, Complainant, by and through its undersigned counsel requests that Respondent produce the following documents for inspection and copying within thirty (30) days of service of this Request at the offices of Cozen O'Connor, 1627 I Street NW, Suite 1100, Washington D.C., 20006. Production of such documents in electronic form is acceptable and preferable.

1. All documents relied upon in responding to the requests for admissions and/or interrogatories or identified in these responses.

2. All reports, summaries, or other documents prepared, reviewed, relied upon, or which may be reviewed or relied upon, by an expert whom you expect to call to testify in this case.

3. A copy of PCCA's FMC-1 filing with the Federal Maritime Commission.

4. A complete copy of each PCCA Tariff and/or Schedule of Charges issued during the years 2005 through 2011.



5. All PCCA financial books and records that relate to or reflect the receipt, deposit, or use of wharfage, dockage, or security fees collected by PCCA from CITGO.

6. Any and all audits, and related correspondence with auditor, of PCCA's financial accounting records for the years 2005 through 2011.

7. Each and every PCCA financial report, financial reporting package, profit and loss statement, and budget for the years 2005 through 2011 to the extent not previously provided.

8. Any and all franchise agreements in force between PCCA and CITGO during the period 2000 to the present.

9. Any and all franchise agreements in force between PCCA and any other owner or operator of a private facility within the Port of Corpus Christi during the years 2000 to the present.

10. Any and all documents used, referred to or relied upon in establishing wharfage, dockage, or any other fee charged by PCCA to vessels using the Corpus Christi Ship Channel since January 1, 2005.

11. All written communications between you or anyone on your behalf and the Federal Maritime Commission since January 1, 2005 relating to charges to be assessed against any vessels using the Corpus Christi Ship Channel, or any facility owners or operators along the Corpus Christi Ship Channel.

12. All documents relating to allocation of costs for the years 2005 through 2011 pertaining to:

- a. Vessels using wharves at public and private facilities.
- b. Harbor security at public or private facilities.

- c. Vessels berthing at a wharf, pier, bulkhead, or bank, or mooring to a vessel so berthed at public or private facilities.

13. Any and all projections, estimates, or calculations of expenses or costs incurred by PCCA in providing services or facilities to vessels serving CITGO at PCCA's public facilities or CITGO's private facilities since January 1, 2005.

14. Any and all projections, estimates, or calculations of expenses relied upon in establishing the bulk liquid tariff rates for the PCCA's wharfage fee, dockage fee, and/or security surcharge fee since January 1, 2005.

15. Any and all documents used, referred to or relied upon in establishing dry tariff rates for wharfage for commodities other than bulk liquid charged by PCCA since January 1, 2005.

16. Any documents relating to modifications or requests for modifications of the wharfage fees charged to CITGO pursuant to its franchise agreement with the PCCA, and PCCA's response(s) to such requests.

17. Any documents relating to modifications or requests for modifications of the wharfage fees charged to the owners or operators of private facilities within the Port of Corpus Christi, other than CITGO, pursuant to a franchise agreement with the PCCA.

18. Any documents relating to the rationale, reasoning, explanation, or justification for modifications, or refusal of modifications, of the wharfage fees charged pursuant to Port Tariff 100-A, Section Five, Loading, Unloading and Wharfage Rates Item 501 B for the years 2005 to 2011.

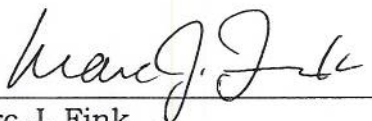
19. Any documents relating to the Port's required expenditure of approximately \$15.5 million as part of the La Quinta Ship Channel and ecosystem restoration and the Channel Improvement Project.

20. Any documents relating to the Port's ability to expend such amount or the means by which such funds will be collected or budgeted for.

21. Any documents analyzing the benefits to Port users of the La Quinta Ship Channel and ecosystem restoration and the Channel Improvement Project.

22. Any documents analyzing the potential users and/or uses of the La Quinta Ship Channel and ecosystem restoration and the Channel Improvement Project.

Respectfully submitted,

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Dated: August \_\_, 2011